
UTAH

HISTORICAL QUARTERLY

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THE COVER *The badge of U.S. Marshal Elwin A. Ireland who was assigned to Utah Territory in April 1882. Ireland helped make the Edmunds Act effective by arresting polygamists such as Rudger Clawson. USHS collections.*

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The Federal Influence

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The Federal Influence

As a final observation it may be noted that a judge who was partial to fellow church members possibly would dismiss a higher percentage of actions brought against Mormons than non-Mormons. However, only slightly more criminal cases involving Mormons were dismissed: actions were dropped against 9 percent, or five of the fifty-four Mormons, and 6 percent, or two of the thirty-six non-Mormons indicted. Neither were dismissals of civil complaints an apparent instrument of discrimination. Only a single case, one in which a non-Mormon brought suit against a Mormon, was dismissed.

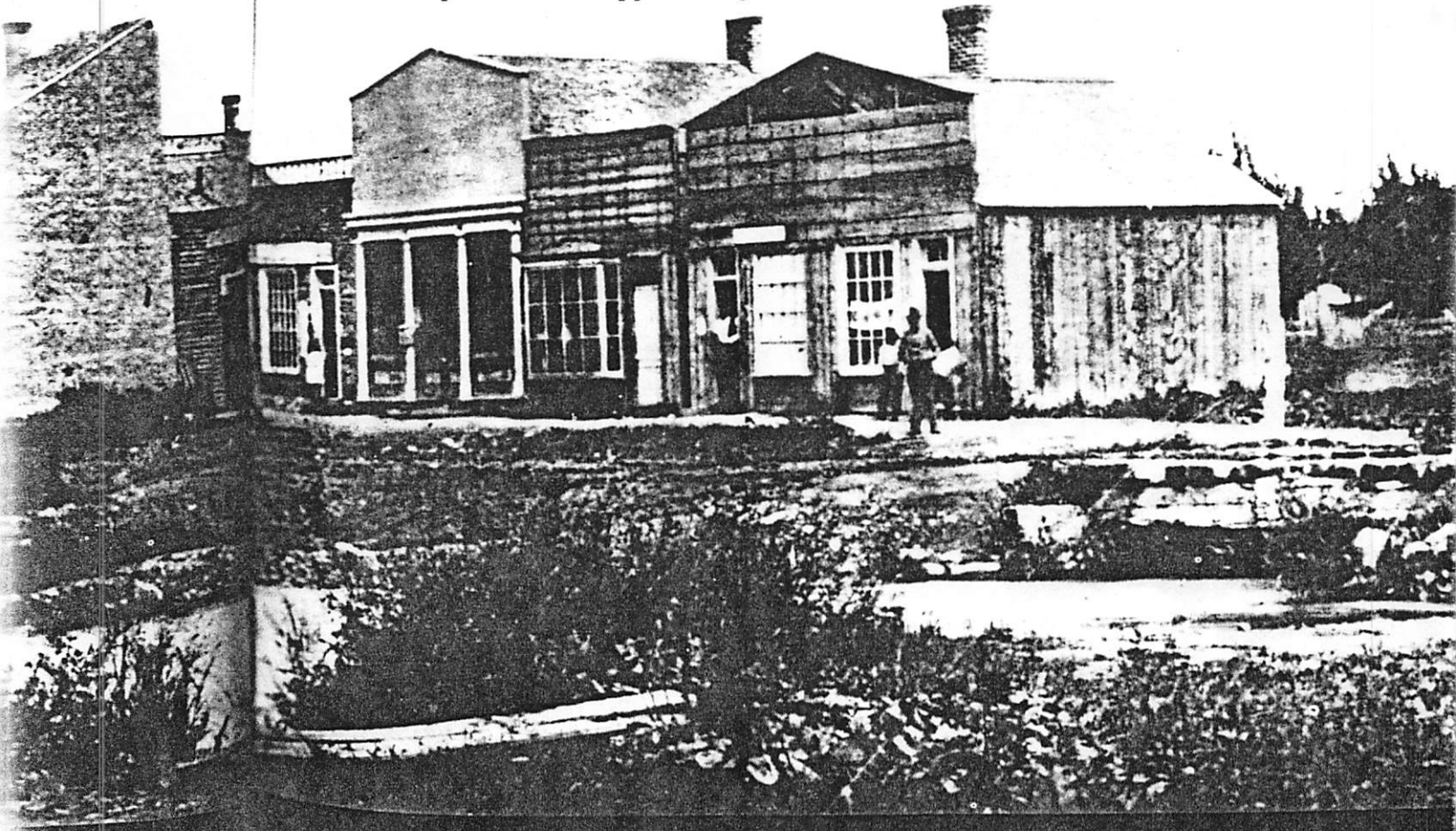
Summarized, the findings of this examination of procedural operations of the probate court neither totally refute nor substantiate the charge that non-Mormons were the target of partisanship. On the one hand, certain data, such as those demonstrating that proportionately more non-Mormons than Mormons were indicted and brought to trial for crimes and that Mormons were granted bail in higher incidence than were non-Mormons, may sustain the accusations of the probate court's critics. Yet, supporting the argument that the court's operations were evenhanded are statistics indicating non-Mormons were not accused of the more serious criminal offenses more regularly than were Mormons. That criminal indictments against Mormons were not more frequently

*Center Street, Provo, 1870s.
USHS collections.*



dismissed also suggests that the courts treated Mormons and non-Mormons with impartiality. However, other possible inferences drawn from the balance of the data are less conclusive. Calculations demonstrating that more non-Mormons than Mormons elected to take their civil disputes to the probate courts may suggest either that non-Mormons expected a fair hearing of their grievances or that Mormons avoided litigation and possibly sought alternative remedies to disputes in which they were a party. That fewer Mormons than non-Mormons filed not guilty pleas in criminal cases possibly indicates that Mormons did not expect the court to rule routinely in their favor or that they felt compelled to confess their guilt before the court.

The nonprocedural decisions and final judgments rendered by judges and juries also serve as possible indicators of whether or not probate courts waged a judicial campaign against Gentiles. For example, the following data, which classify decisions of tried civil cases as pro-Mormon or not, appear to indicate that a litigant's membership or non-membership in the Mormon church was not a controlling factor in the court's ruling. If anything, this information suggests that the probate judges favored the plaintiff over the defendant regardless of his church membership. Of course, it can be argued that the individual bringing the suit would most often win his case because he probably had a credible complaint before approaching the court.



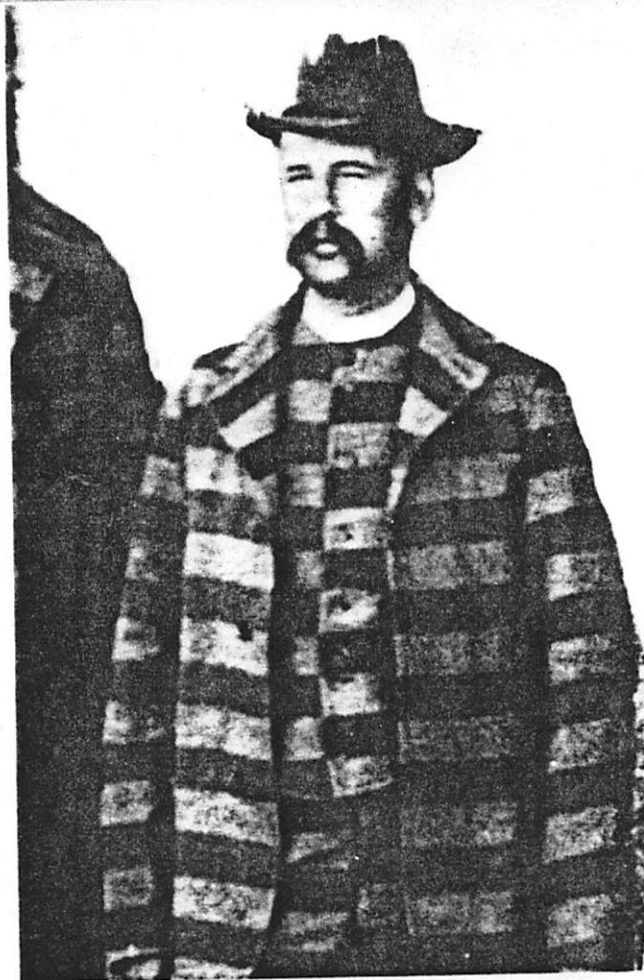
**“Good Guys”
vs.
“Good Guys”:
Rudger Clawson,
John Sharp,
and Civil
Disobedience
in
Nineteenth-
century
Utah**

BY JAMES B. ALLEN

ON SEPTEMBER 29, 1885, MORMON Bishop Hiram B. Clawson joined his son, Rudger, as a convict in the Utah Territorial Penitentiary. Both were imprisoned for violating a constitutional law of the land—the law against plural marriage. But before going to prison Bishop Clawson ex-

James B. Allen is professor of history at Brigham Young University. He expresses great appreciation to Breck England and Glenn V. Bird for research assistance. This paper was first given as a lecture at the College of Eastern Utah in May 1976 as a part of a BYU lecture series on “Public Ethics in an Era of Challenge and Change” funded by the Utah Endowment for the Humanities.

Top: Rudger Clawson in prison garb. Bottom: Bishop John Sharp. USHS collections.



Civil

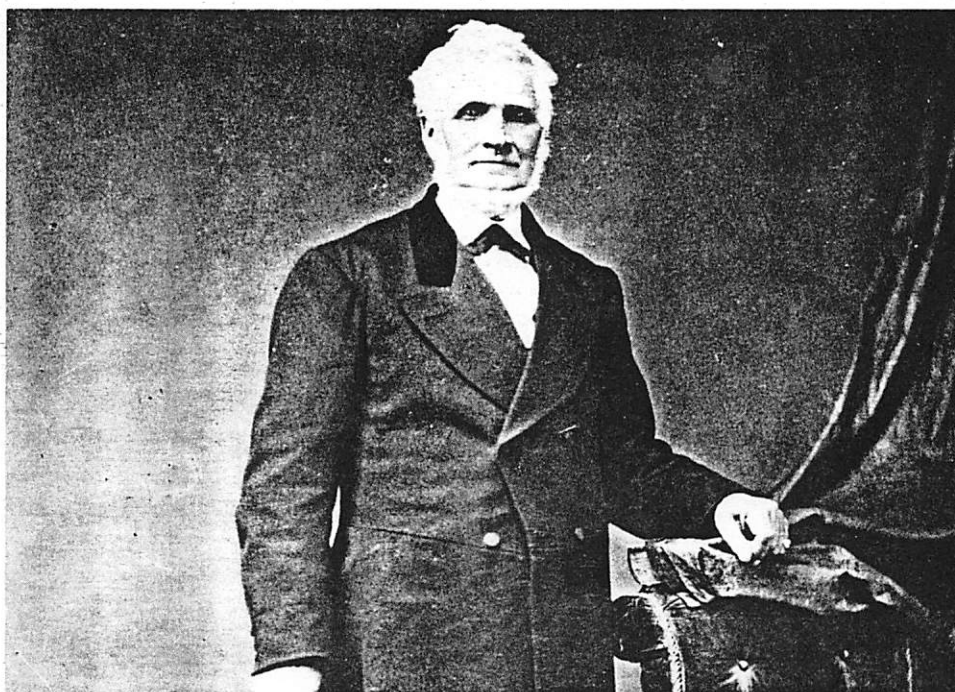
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John Taylor justified civil disobedience with regard to antipolygamy legislation on the basis of First Amendment protection of religious freedom, despite Supreme Court rulings. USHS collections.

superseded all other opinion, even the opinion of the court, and this idea would prevail as long as Taylor lived. The Saints would oppose the law by continuing to violate it, though they hoped eventually it would be changed. They would also continue to preach the doctrine of plural marriage and would bow to no one in their conviction that what they taught was true. Even if it meant imprisonment and fines, their determination to prevail would be their most potent weapon and would result, they believed, in victory.

The year 1879 seemed to put new life into the forces determined to destroy polygamy and new determination into the hearts of the Saints to stand their ground.¹⁰ Some of those who led the battle against polygamy, were, of course, seeking little more than personal political or economic advantage. Others were well-meaning reformers, morally outraged at the practice and genuinely concerned that the Saints conform

¹⁰ For an in-depth discussion of this period of conflict, see Gustive O. Larson, *The Americanization of Utah for Statehood* (San Marino, Calif.: Huntington Library, 1971). For a summary treatment see James B. Allen and Glen M. Leonard, *The Story of the Latter-day Saints* (Salt Lake City: Deseret Book Co., 1976), chap. 12. See the bibliography for that chapter for more intensive reading.